

Title	Small Claims: New Optional Form, <i>Authorization to Appear on Behalf of Party (Small Claims)</i>
Summary	The proposed form would meet the requirements found in Code of Civil Procedure section 116.540 of the Small Claims Act, which permits specified persons to appear on behalf of a small claims party if a declaration is filed with the court that contains required statutory statements.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, (415) 865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Currently there is no Judicial Council–approved form for the declaration that must be filed with the small claims court when an individual seeks to appear on behalf of a party to a small claims action. (See Code of Civil Procedure section 116.540.) Some courts have developed their own forms. Small claims advisors have suggested that a uniform statewide form would be a valuable addition to the Judicial Council’s roster of small claims forms.</p> <p>Under the Small Claims Act, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action except as permitted by the code. (See Code Civ. Proc., § 116.540, attached at page 5.) The section lists various categories of parties who may be represented by others, including, among others, different forms of business entities, plaintiffs who are in the armed forces, and parties who are incarcerated. A declaration must be filed with the court that complies with specific statements required by that subdivision. (Code Civ. Proc., §116.540 (i).)</p> <p>The committee started with a small claims form developed by the Superior Court of Orange County. The form was revised to add a separate category for persons appearing on behalf of a government agency or other public entity (item 4d), which we believe was the intent under Code of Civil Procedure section 116.540 (c), which governs “a party who is not a corporation or a natural person” Near the end of the form, an option for a spouse seeking to appear on behalf of his or her spouse has been added (item 4i). The court must find that this would be in the interests of justice. (Code Civ. Proc., §116.540(j).) At the end of the form an option is provided for a person to request to appear on behalf of another party who needs assistance. A statement of reasons must be provided to support a finding that the</p>

party cannot present his or her claim or defense. (See item 5; Code Civ. Proc., §116.540(k).)

In particular, the committee seeks comment on use of the phrase “duly appointed” that follows the statutory language under items 4a, 4c, and 4d. Is the word “duly” confusing for the layperson and, if so, is there a better word that conforms to statutory intent? The committee also seeks comment on whether the form should be mandatory instead of optional.

The proposed form follows.

Attachments

116.540. (a) Except as permitted by this section, no individual other than the plaintiff and the defendant may take part in the conduct or defense of a small claims action.

(b) A corporation may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, who is employed, appointed, or elected

for purposes other than solely representing the corporation in small claims court.

(c) A party who is not a corporation or a natural person may appear and participate in a small claims action only through a regular employee, or a duly appointed or elected officer or director, or in the case of a partnership, a partner, engaged for purposes other than solely representing the party in small claims court.

(d) If a party is an individual doing business as a sole proprietorship, the party may appear and participate in a small claims action by a representative and without personally appearing if both of the following conditions are met:

(1) The claim can be proved or disputed by evidence of an account that constitutes a business record as defined in Section 1271 of the Evidence Code, and there is no other issue of fact in the case.

(2) The representative is a regular employee of the party for purposes other than solely representing the party in small claims actions and is qualified to testify to the identity and mode of preparation of the business record.

(e) A plaintiff is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim or allow another individual to appear and participate on his or her behalf, if (1) the plaintiff is serving on active duty in the United States armed forces outside this state, (2) the plaintiff was assigned to his or her duty station after his or her claim arose, (3) the assignment is for more than six months, (4) the representative is serving without compensation, and (5) the representative has appeared in small claims actions on behalf of others no more than four times during the calendar year. The defendant may file a claim in the same action in an amount not to exceed the jurisdictional limits stated in Sections 116.220 and 116.231.

(f) A party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility is not required to personally appear, and may submit declarations to serve as evidence supporting his or her claim, or may authorize another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(g) A defendant who is a nonresident owner of real property may defend against a claim relating to that property without personally appearing by (1) submitting written declarations to serve as evidence supporting his or her defense, (2) allowing another individual to appear and participate on his or her behalf if that individual is serving without compensation and has appeared in small claims actions on behalf of others no more than four times during the calendar year, or (3) taking the action described in both (1) and (2).

(h) A party who is an owner of rental real property may appear and participate in a small claims action through a property agent under contract with the owner to manage the rental of that property, if (1) the owner has retained the property agent principally to manage the rental of that property and not principally to represent the owner in small claims court, and (2) the claim relates to the rental property.

(i) At the hearing of a small claims action, the court shall require any individual who is appearing as a representative of a party under subdivisions (b) to (h), inclusive, to file a declaration stating (1) that the individual is authorized to appear for the party, and (2) the basis for that authorization. If the representative is appearing under subdivision (b), (c), (d), or (h), the declaration also shall state that the individual is not employed solely to represent the party in small claims court. If the representative is appearing under subdivision (e), (f), or (g), the declaration also shall state that the representative is serving without compensation, and has appeared in small claims actions on behalf of others no more than four times during the calendar year.

(j) A husband or wife who sues or who is sued with his or her spouse may appear and participate on behalf of his or her spouse if (1) the claim is a joint claim, (2) the represented spouse has given his or her consent, and (3) the court determines that the interests of justice would be served.

(k) If the court determines that a party cannot properly present his or her claim or defense and needs assistance, the court may in its discretion allow another individual to assist that party.

(l) Nothing in this section shall operate or be construed to authorize an attorney to participate in a small claims action except as expressly provided in Section 116.530.

APPEARING FOR <input type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT (your name and address): TELEPHONE NO. : FAX NO. (Optional): E-MAIL ADDRESS (Optional):	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	DRAFT-6
PLAINTIFF (Names): DEFENDANT (Names):	
AUTHORIZATION TO APPEAR ON BEHALF OF PARTY (Small Claims)	CASE NUMBER:

1. I am authorized to appear on behalf of
☐ Plaintiff (name):
☐ Defendant (name):
 (An attorney may participate only as provided in Code Civ. Proc., § 116.530.)
2. My name is (specify):
3. My
 - a. ☐ title is (specify):
 - b. ☐ relationship to the party on whose behalf I am appearing is (specify):
4. I am appearing on behalf of (check one box):
 - a. ☐ **a corporation.** I am a regular employee or a duly appointed or elected officer or director of the corporation and do not solely represent the corporation in small claims court.
 - b. ☐ **a sole proprietorship.** I am qualified to testify to the identity and mode of preparing the business record. The claim can be proved or disputed by evidence of an account that makes up the business record as defined in Evidence Code section 1271, and there is no other issue of fact in this case. I am a regular employee and do not solely represent the party in small claims court.
 - c. ☐ **a business that is not a corporation or sole proprietorship.** I am a regular employee or a duly appointed or elected officer or director, or, in the case of a partnership, a partner of the business and do not solely represent the business in small claims court.
 - d. ☐ **a government agency or other public entity.** I am a regular employee or a duly appointed or elected officer or director and do not solely represent the government agency or public entity in small claims court.
 - e. ☐ **a plaintiff serving on out-of-state active duty in the United States armed forces.** The plaintiff was assigned to an out-of-state duty station after his or her claim arose and the assignment is for more than six months. I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
 - f. ☐ **a party incarcerated in a county jail, a Department of Corrections facility, or a Youth Authority facility.** I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
 - g. ☐ **a defendant nonresident owner (out of state or country) of real property.** I am not being compensated for appearing. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
 - h. ☐ **an owner of rental property.** I am a property agent under contract with the owner to manage rental of the property. The claim relates to the rental property. The owner has retained me principally to manage the rental of that property and not to represent the owner in small claims court. I am not employed to solely represent the owner in small claims court. I have appeared in small claims court on behalf of others no more than four times during the calendar year.
 - i. ☐ **my spouse.** I have sued or been sued with my spouse on a joint claim. My spouse has given me consent to represent him or her in small claims court.

I request the court to find that the interests of justice would be served by having me appear and participate on behalf of my spouse.

PLAINTIFF:	CASE NUMBER:
DEFENDANT:	

5. ☐ I am appearing on behalf of **another party** not listed above. I request that the court, in its discretion, allow me to assist a party who cannot properly present his or her claim or defense without my assistance. *(State why party needs your assistance).*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)